

## REMARKS

Claims 63, 65-68, and 70-75 constitute the pending claims in the present application. Applicants respectfully request reconsideration in view of the following remarks. Issues raised by the Examiner will be addressed below in the order they appear in the prior Office Action.

1. Applicants note with appreciation that the previous office action has been rescinded. Applicants further note that the submission filed March 21, 2005 has been entered in full.

2. Claims 63, 65-68, and 70-75 are rejected under 35 U.S.C. 102(e) as allegedly anticipated by Ingham et al. (US Patent No. 5,844,079). Applicants traverse this rejection.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226 (Fed. Cir. 1989). MPEP 2131 outlines these principles.

Ingham et al. fail to teach or suggest each and every element of the claimed invention, and thus Ingham et al. fail to anticipate the claimed invention. Applicants contend that Ingham et al. fail to teach topical preparations formulated on a sponge, bandage, dressing, or film. The Examiner alleges, however, that the disclosure in Ingham et al. of “hydrogels that can be used to form an implant such as within a gauze” reads upon the present claims. (Office Action, page 3). Applicants respectfully disagree.

The basis of the Examiner’s rejection appears to be the portion of Ingham et al. from column 52, line 52 through column 53, line 25. Here, Ingham et al. teach that “[a] variety of biocompatible polymers (including hydrogels), including both biodegradable and non-degradable polymers, can be used to form an implant for the sustained release of an hh at a particular target site.” (column 52, lines 56-60). From this, the Examiner posits that Ingham et al. teach hedgehog polypeptides formulated on a dressing. As a first point, the Examiner provides no explanation or secondary reference to support the contention that the foregoing sentence regarding hydrogels reads on preparations formulated on dressings and gauzes. That deficiency aside, this interpretation of the term “hydrogel” appears to ignore the context in which the term is used. Specifically, as used in the referenced passage of the cited patent, hydrogels are used to form an *implant* for sustained release.

The term implant refers to an object or device that is inserted or embedded **within** the body. (The American College Dictionary, Third Edition). The plain meaning of the term is inconsistent with and, in fact, teaches away from the topical preparations presently claimed. Accordingly, Ingham et al. fail to anticipate the claimed invention. Reconsideration and withdrawal of this rejection is respectfully requested.

3. Claims 63, 65-68, and 70-75 are rejected under 35 U.S.C. 102(b) as allegedly anticipated by Wang (US Patent No. 6,639,051). Applicants traverse this rejection.

US Patent No. 6,639,051 is not available for prior art purposes against the instant application. US Patent No. 6,639,051 issued from US application serial no. 09/151,999. The instant application is a continuation of and claims priority to US application serial no. 09/151,999. Accordingly, Wang is not available as prior art against the instant application under 35 U.S.C. 102(b). Reconsideration and withdrawal of this rejection is respectfully requested.

4. Claims 63, 65-68, and 70-75 are rejected under 35 U.S.C. 103(a) as allegedly unpatentable over Ingham et al. in view of Wang. Applicants traverse this rejection.

As mentioned above, the instant application is a continuation of and claims priority to Wang (US Patent No. 6,639,051). Accordingly, Wang is not available as prior art against the instant application under 35 U.S.C. 103(a). Reconsideration and withdrawal of this rejection is respectfully requested.

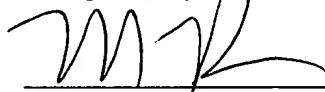
### **CONCLUSION**

In view of the foregoing amendments and remarks, Applicants submit that the pending claims are in condition for allowance. Early and favorable reconsideration is respectfully solicited. The Examiner may address any questions raised by this submission to the undersigned at 617-951-7000. Should an extension of time be required, Applicants hereby petition for same and request that the extension fee and any other fee required for timely consideration of this submission be charged to **Deposit Account No. 18-1945, under Order No. CIBT-P03-031.**

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Respectfully Submitted,



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